HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.16457 of 2001

24-08-2005

Between:

Worldwide Diamond Manufacturers Pvt. Ltd.,

Unit No.7, SDF Building, VEPZ,

Duvvada, Visakhapatnam – 530046

Rep. by its Authorised Signatory,

Mr. Sandeep Majumdar

.. Petitioner

and

The Commercial Tax Officer,

Anakapalli, Visakhapatnam district.

.. Respondent

HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.16457 of 2001

ORDER: (Per Hon'ble Sri Justice B.Sudershan Reddy)

The petitioner invokes the extraordinary jurisdiction of Article 226 of the Constitution of India with prayer to issue a writ of certiorari or any other appropriate writ and quash the impugned order of the respondent dated 25-07-2001 and the consequential demand notice calling upon the petitioner to pay a sum of Rs.34,63,605/- for the assessment years 1997-98 to 2000-01 as illegal and without jurisdiction.

The petitioner is registered dealer under the provisions of Andhra Pradesh General Sales Tax Act, 1957 (for short 'the State Act') as well as Central Sales Tax Act, 1956 (for short 'the Central Act'). It is stated in the affidavit filed in support of the writ petition that there was a separate company by name
M/s Bettonville Diamond Equipment India Private Limited (for short 'the amalgamated company') having common directors and shareholders as that of the

petitioner company. The amalgamated company is also a separate registered dealer under the provisions of both the Acts. While the petitioner was engaged in the business of diamond jewellery, the amalgamated company was engaged in the business of manufacturing diamond-cutting tools. It is asserted that the petitioner as well as the amalgamated company were admitted to the benefits of sales tax exemption for a period of seven years under G.O.Ms.No.108 dated 20-05-1996. It is the case of the petitioner that it is eligible to claim exemption of Rs.3,23,87,390/- for the period 01-04-1998 to 31-03-2005 as evident from the certificate dated 22-02-1999 and amalgamated company is eligible to exemption of Rs.38,62,370/- from 11-01-1998 to 10-01-2005.

There is no dispute that Bettonville Diamond Equipment India Private Limited is amalgamated with the petitioner company with effect from 01-04-1999. It is stated that the amalgamated company addressed a letter dated 20-06-2001 to the Commissioner of Commercial Taxes that it availed sales tax exemption to the extent of Rs.33,20,392/- and that it is amalgamated with the petitioner company and management continues to be the same. That a request was made to permit the company to claim the benefit of sale tax exemption given in the name of amalgamated company. The respondent herein issued impugned demand notice on the ground that no final eligibility certificate as such has been issued in the name of the petitioner company. Sri Bhaskar Reddy, learned counsel appearing for the petitioner made available a copy of the proceedings dated 15-09-2001 on the file of Commissioner of Industries, Chirag Ali Lane, Hyderabad, which is to the following effect:

> "M/s Bettonvile Diamond Equipment (I) (P) Ltd., VEPZ, Visakhapatnam was sanctioned and issued Revised final eligibility certificate fixing up eligibility for Sales Tax EXEMPTION issued in file bearing No.10/1/8/2235 dated 12-04-2000.
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> In the reference 6th cited, the General Manager, Dist. Industries Centre, Visakhapatnam, has informed that as per the orders of the Hon'ble High Court of

Maharastra, the unit of M/s Bettonvile Diamond Equipment (I)(P) Ltd., VEPZ, Visakhapatnam was amalgamated with the unit of M/s Worldwide Diamond Mfrs (P) Ltd., VEPZ, Hyderabad. Basing on the report of the General Manager, DIC, Visakhapatnam the Sales Tax Incentives i.e. Final Eligibility Certificate for Sales Tax Exemption of M/s Bettonvile Diamond Equipment (I)(P) Ltd., is changed in favour of M/s Worldwide Diamond Mfrs (P) Ltd., VEPZ, Visakhapatnam.

Temporary Eligibility for Sales Tax concession obtained earlier from the General Manager, District Industries Centre concerned, if any, is to be treated as part of the final eligibility now fixed.

The revised Final Eligibility Certificate issued in the name of M/s Bettonvile Diamond Equipment (I) (P) Ltd., VEPZ, Visakhapatnam, vide Lr.No.10/1/8/2235/2235/ID dated
12-04-2000 may be treated as cancelled."

It is thus clear that the revised Final Eligibility Certificate issued in favour of M/s Bettonvile Diamond Equipment India Private Limited, Visakhapatnam is treated as cancelled. Admittedly, the Eligibility Certificate obtained earlier is treated as part of final eligibility now fixed. The proceedings clearly disclose the Final Eligibility Certificate for sales tax exemption of Bettonvile Diamond Equipment India Private Limited is changed in favour of the petitioner namely M/s Worldwide Diamond Manufacturers Private Limited, Visakhapatnam. The petitioner is thus entitled to the benefit of sales tax exemption. The impugned demand notice cannot be given effect to in view of the proceedings of the Commissioner of Industries granting eligibility for sales tax exemption in favour of the petitioner. The impugned demand notice is accordingly quashed.

The writ petition is accordingly allowed without any order as to costs.

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B.SUDERSHAN REDDY, J

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RAMESH RANGANATHAN, J

24-08-2005

bsc